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Division Six JEANNE HICKS, Clerk  
BY ~~R. BOEUF~~ Deputy

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER

Defendant.

P1300CR20081339

PRELIMINARY JURY  
INSTRUCTIONS

(Hon. Thomas B. Lindberg)

I. Jury service is an important part of our system of justice, with a long and distinguished tradition in American law. From the beginning, American law has viewed the jury system as an effective means of drawing on the collective wisdom, experience, and fact-finding abilities of persons such as you. While it may be an occasional inconvenience, or worse, jury service is an important responsibility for you, one, which I am sure, you will take seriously.

II. Ladies and Gentlemen:

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations.

A. It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

B. You will hear the evidence, decide the facts, and then apply the law I will give to you to those facts. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not. You must not take anything I may say or do during the trial as indicating any opinion about the facts. You, and you alone, are the judges of the facts.

- C. You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received into evidence as exhibits, and any evidence stipulated to by the parties or that you are instructed to consider. You may hear reference to exhibits that are not admitted and are not asked to be admitted. These exhibits are not admitted as evidence, but the information from them that is testified to by witnesses is evidence that you may consider. You will decide the credibility of the witnesses and weight to be given to any evidence presented in the case, whether it is direct evidence or circumstantial evidence.
- D. Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.
- E. In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence. Consider all of the evidence in light of reason, common sense, and experience.

- F. A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions. Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.
- G. During the trial, the lawyers are permitted to stipulate that certain evidence exists. This means both sides agree that evidence exists and is to be considered by you during your deliberations at the conclusion of the trial.
- H. Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence. If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose. Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility of the witnesses or the weight you should give to any evidence that has been admitted.
- I. The Rule of Exclusion of Witnesses is in effect and will be observed by most witnesses until the trial is over and a result announced. This means that most witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the bailiff unless other arrangements have been made with the attorney who has called them. The Court has determined that some

witnesses are not subject to this rule and you should not concern yourself with who is and who is not excluded. This rule does not apply to the certain designated family members of the victim in this case, all of whom are permitted to be present for any and all proceedings even though they may be called as witnesses. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time, as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they accidentally enter.

- J. From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be. Please do not be concerned with what we are discussing at any bench conference we may have. If you overhear what is taking place at a bench conference, please advise the Court immediately. Please respect the privacy of those participating in the bench conference in order to maintain the fairness of the trial.

- K. As I mentioned earlier, it is your job to decide from the evidence what the facts are. Here are six rules on what is and what is not evidence:
1. Evidence to be considered: You must determine the facts only from the testimony of witnesses and from exhibits admitted in evidence. Anything you may see or hear when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses, is not evidence and must not be considered by you. If you should hear or see anything pertaining to the case outside the courtroom or if anyone should attempt to speak to you about this case outside the courtroom, please report to me as soon as you can.
  2. Lawyers' statements: Statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law.
  3. Questions to a witness: A question is not evidence. A question can only be used to give meaning to a witness' answer.
  4. Objections to questions: If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not try to guess the reason why the lawyer objected in the first place.
  5. Rejected evidence: At times during the trial, evidence may be offered that I do not admit as evidence. When evidence is not admitted, you must not consider it for any purpose.
  6. Stricken evidence: At times I may order some evidence to be stricken from the record. Then it is no longer evidence and you must not consider it for any purpose.
- L. At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. The court encourages you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you miss hearing or seeing other testimony. You may use your notes during your deliberations at the end of the trial. Until then, keep your notes to yourself. During recesses in the trial, you may leave your notes on your seat. Your notes are confidential and my bailiff will guard them. No one will be allowed to read your notes. Whether you take notes or not, you should rely upon your own memory of what was said. After you have rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

III. I now want to instruct you on some general principles of law which you will be applying to this case.

A. The State has charged the defendant with two crimes. The charge is not evidence against the defendant. You must not think the defendant is guilty just because the defendant has been charged with a crime. The defendant has pled "not guilty." The defendant's plea of "not guilty" means that the State must prove every part of the charge beyond a reasonable doubt.

B. The law does not require a defendant to prove his innocence. He is presumed by law to be innocent.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of a crime charged, you must find him guilty of that crime. If, on the other hand, you think there is a real possibility that he is not guilty of a crime, you must give him the benefit of the doubt and find him not guilty of that crime.

- C. In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment. Punishment is the sole duty of the Court, as I told you yesterday, if a verdict of guilty is returned. You are instructed as I told you yesterday that you may not and must not consider any information which you received about punishment in reaching your conclusions as to whether the defendant is guilt or not guilty.
- D. A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.
- E. If there is testimony in this case about what a defendant said to a law enforcement officer, you must not consider any such statements unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily. A defendant's statement to a law enforcement officer was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats or by any direct or implied promise, however slight. You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

IV. To assist you in considering the evidence that will be presented during the trial, I will now tell you about the crimes with which the

defendant is charged. The defendant is charged with first degree murder (Count I) and burglary in the first degree (Count II) which crimes require proof of the following:

The crime of first degree murder requires proof that the defendant:

1. caused the death of another person; **and**
2. intended or knew that he would cause the death of another person; **and**
3. acted with premeditation.

The crime of burglary in the first degree requires proof of the following:

1. The defendant entered or remained unlawfully in or on a residential structure; **and**
2. The defendant intended to commit any theft or felony therein: **and**
3. At some time between the moment of entry through flight from the scene, the defendant knowingly possessed a dangerous instrument: to wit, a golf club.

The defendant has pled "not guilty" to these charges. The State must prove each element of the charged crimes beyond a reasonable doubt.

V. For the purpose of this trial, you are to use the following definitions:

A. "Intentionally" [or "with intent to"] as used in these instructions means that a defendant's objective is to cause that result or to engage in that conduct.

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.



B. "Knowingly" means that a defendant acted with awareness of [or belief in] the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.

C. "Conduct" means an act or omission and its accompanying culpable mental state.

D. "Dangerous instrument" means anything that is readily capable of causing death or serious physical injury under the circumstances in which it is [used] [attempted to be used] or [threatened to be used].

E. "Deadly physical force" means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.

F. "Felony" means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.

G. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

H. "Premeditation" means that the defendant intended to kill another human being or knew he would kill another human being, and that after forming that intent or knowledge, reflected on the decision before killing. It is this reflection, regardless of the length of time in which it occurs, that distinguishes first degree murder from second degree murder. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

I. "Person" means a human being.

M. "Enter or remain unlawfully" means an act of a person who enters or remains on premises when the person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit theft of merchandise displayed for sale during normal business hours, when the premises are open to the

public and when the person does not enter any unauthorized areas of the premises.

N. "Entry" means the intrusion of any part of any instrument or any part of a person's body inside the external boundaries of a structure or unit of real property.

- VI. I am now going to say a few words about your conduct as jurors. I am going to give you some do's and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio or the Internet for information. If you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys. This prohibition about not discussing the case includes using e-mail, Facebook, MySpace, Twitter, instant messaging, Blackberry messaging, I-Phones, I-Touches, Google, Yahoo, or any internet search engine, or any other form of electronic communication for any purpose whatsoever, if it relates in any way to this case. This includes, but is not limited to, blogging about the case or your experience as a juror on this case, discussing the evidence, the lawyers, the parties, the court, your deliberations, your reactions to testimony or exhibits or any aspect of the case or your courtroom experience with anyone whatsoever, until the trial has ended, and you have been discharged as jurors.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being

considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff **928-771-3316** as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses or media representatives about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the appearance of improper conduct.

However, if you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

The lawyers and parties have been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot

speaking with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You therefore may not discuss the evidence among yourselves until you retire to deliberate on your verdict.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

- VII. There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.
- VIII. The law provides for a jury of 12 persons in a case such as this. We have more than 12 jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror. At the end of the case, alternate jurors will be determined by lot in a drawing held in open court. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

- IX. The trial is expected to last through July or August. We will all do our best to move the case along, but delays frequently occur. These won't be anyone's fault, so don't hold them against the parties. Delays usually occur because the attorneys and I often need to resolve certain legal matters before these matters may be presented to you in court or because I am busy with matters in other cases.

The usual hours of trial will be from 9:00 a.m. to 5:00 p.m. We will take short recesses about every mid-morning and mid-afternoon and occasionally stretch breaks in place. We will recess at 12:00 p.m. and begin again at 1:15 p.m. Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time of 9:00 a.m. for the next day. At the beginning of the day, please assemble in the jury room for this division. Please do not come back into the courtroom until you are called by the bailiff.

- X. The trial will now begin.

First, the prosecuting attorney will make an opening statement giving a preview of the case. The defendant's attorney may make an opening statement outlining the defense case immediately after the prosecutor's statement, or it may be postponed until after the State's case has been presented. What is said in opening statements is not evidence. Nor is it an argument. The purpose of an opening statement is to help you prepare for anticipated evidence.

Next, the State will present its evidence. After the State finishes the presentation of its evidence, the defendant may present evidence but is never required to do so. If the defendant does produce evidence, the State may present additional, or rebuttal, evidence.

With each witness, there is a direct examination, a cross-examination by the opposing side, and, finally, redirect examination. This usually ends the testimony of that witness.

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if

you get into personal distress for any reason, raise your hand and let me know.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand. The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers. If a particular question is not asked, please do not guess why or what the answer might have been.

After all the evidence is in, I will read and give you copies of the final instructions, the rules of law you must follow in reaching your verdict.

Then, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open and close the argument since the State has the burden of proof. Just as in opening statements, what is said in closing arguments is not evidence.

Finally, you will deliberate in the jury room about the evidence and rules of law in an effort to reach the verdicts. If you unanimously agree upon the verdict(s), which will be read in court with you and the parties present.

Thereafter, you will be discharged and released from the Admonition.

The rules of law I have shared with you in the past few minutes are preliminary only. At the end of the case I will read to you and give you a copy of the final instructions of law. In deciding the case you must be guided by the final instructions.